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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 927

IN THE MATTER

of

LANDON ZUCKERMAN and SAM HABER,

Petitioners,

against

SAMUEL GREASON,

Respondent.

REPLY BRIEF OF PETITIONER

EMANUEL REDFIELD,
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1. The respondent in an attempt to answer questions 1, 2 and 3 lays stress upon the fact that this court when it reversed the order in this case did not mention *Garrity* v. *New Jersey*. But this misses the point of the questions. The questions can be epitomized (and were so treated below): May an attorney be disciplined by the use of evidence obtained through coercive means in violation of the constitutional protection of the Fifth Amendment?

2. The respondent urges in his brief (p. 10), that the petitioners come under a rule of public records required to be kept by attorneys. This argument was the same as made in *Spevack*, and there disposed of by this court. That

contention was made for the first time in this case, in the Court of Appeals, but was not passed upon by that court, for the evident reason that the petitioners contended that *Cole* v. *Arkansas*, 333 U. S. 196, 201, commands that a person be adjudged on the charges at the time of trial and not for the first time in the court of last resort. Moreover, the evidence here clearly shows that the records sought were the attorneys' files and financial records of petitioner. See subpoenas (Petition, Appendix H, page 47 and Appendix J, p. 51). Surely, the files of an attorney are so confidential that not even a court order can compel their exposure, *Hickman* v. *Taylor*, 329 U. S. 495; Section 4503 New York Civil Practice Law and Rules. Financial records were also commanded in *Spevack* but this court found no public aspects in such records.

3. The respondent notes that the petitioners testified without objection. This contention was the principal one he made below, and was passed upon by the Court of Appeals with these words, which we repeat for emphasis from the petition (p. 10):

> "If Zuckerman and Haber's constitutional contention be correct on this appeal, it might be argued with some force that neither of them was obliged to object in order to raise the point, in as much as making that objection could have resulted automatically in their disbarment for so long as *Cohen* v. *Hurley* remained the law."

Indeed, that court was merely repeating what it said in *People* v. *Lucas*, 15 N. Y. 2d 167, citing *Henry* v. *Mississippi*, 379 U. S. 443.

4. Respondent cites *Anonymous* v. *Baker*, 360 U. S. 287 as the answer to the contention of petitioners that Section 90 on its face, as construed and as applied, denies petitioners due process of law. A reading of that case shows that this court expressly held that those issues were *not*

properly before it, and decided the case on an entirely different issue.

It is curious in this connection, that respondent sets forth (p. 12) the number of personal injury cases for which petitioners filed retainer statements, as if the factor of quantity alone, renders an attorney suspect of a wrong that renders him a candidate for inquisition. The respondent is quite frank in admitting such to be the case; he states (p. 12): "This led to the investigation of the Petitioners".

5. In order that an attorney be found guilty of violating Rule 7, it is indispensable that a finding be made that an attorney have knowledge that the adversary from whom a statement is obtained, was at the time represented by counsel, *Matter of Marino and Plesser*, 20 N. Y. 2d 176. There is no evidence in this case, that petitioners had such knowledge. The evidence is to the contrary: the petitioners had no such knowledge.

6. We emphasize that the respondent has failed to answer Question 8 (brief, p. 15). The respondent does not indicate where in the record there is a finding of the guilty conduct as to each of the petitioners separately.

7. We urge, as Judge Fuld did, that the remand by this court and by the remittitur of the Court of Appeals upon its earlier reversal, the petitioners were entitled to a hearing as to the issues of the voluntariness of their testimony or to a dismissal in the alternative.

Respectfully submitted,

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